

Lay Magistrates Exam Question

1. Lay magistrates are ordinary people who have no legal qualifications that serve on as part of a bench in the magistrate's court. If the English legal system were based just around professional judges then the whole justice system would deteriorate. This is why Lay Magistrates, also called Justices of the Peace or Lay Justices, are employed. There are currently 30000 magistrates who volunteer to work.

There are approximately 1600 Lay Magistrates appointed each by the Lord Chancellor on recommendation of the Advisory Committee set out in the adapted Justices of the Peace Act 1997. There are over 100 Advisory Committees around the England and Wales that recommend names to the Lord Chancellor who formally appoints them through a letter. This shows that the Lord Chancellor relies a lot on the Advisory Committees because they have the local knowledge needed and the ability to assess and interview potential Lay Magistrates locally. In the Advisory Committee there should be at least 12 members and at least one person in the committee should be from each major political party and some members who should be politically independent. Also one third of the committee should not be Lay Magistrates meaning that they will have to have some legal qualifications. The names of potential Lay Magistrates can be put forward by anyone but most of the time they are put forward via the different political parties, trade unions or businesses. There are also adverts in local papers which are aimed at ethnic minorities.

People who are not eligible to become Lay Magistrates are bailiffs and CPS employees because they will have some legal qualifications. Others that are not eligible are members of the forces, serving police officers and store detectives because sometimes the cases can last from anything up to a month. In those jobs you might be called up to do something whilst on a case which would mean that there was one less magistrate on the bench and therefore limiting your chances of a fair trial. The major qualification to become a Lay Magistrate is not to have a qualification in law. Applicant must be between 21 and 65 but applicant under 27 are not considered. This is a criticism of the selection procedure because the government wants to have younger people as Lay Magistrates but you have to be 27 so the government is being hypocritical. Also you have to live 15 miles within the commission area as stated in the Justices of the

Peace Act 1997. Lay Magistrates are required to sit on the bench at least 26 half days but in theory most Lay Magistrates sit on the bench for 35 half days. Employers have to let people take time off for Magistrate business but they do not have to pay them. But Magistrates can claim lost earnings back but at a minimum wage.

In 1998 the Lord Chancellor have new directions to the Advisory Committees in attempt to standardise the Lay Magistrates selection process. There are six key qualifications that must be taken into consideration when assessing a potential Lay Magistrate. A Lay Magistrate must possess good character. This is personal integrity and the respect and trust of others, respect for confidences. Also the potential candidate must possess good understanding and communication. This is the ability to understand documents, identify and comprehend relevant facts, and follow evidence and arguments. Another factor that is taken into account is social awareness. This is the appreciation and acceptance of the rule of law, understanding of the local communities and society in general. Sound judgement is also considered. This is your common sense, the ability to think logically, weigh arguments and reach a balanced decision. Maturity and sound temperament is also assessed. This is the ability to relate to and work with others, regard for the views of others. The last thing that is required is Commitment and reliability. This is your reliability and how committed you are to serve the community, willingness to undertake at least 26 and up to 35 half day sittings a year, willingness to undertake the required training, ability to offer requisite time. This is part of the interview process and these factors are taken into account after age.

The Lord Chancellor also demands that the bench of the magistrates should be based broadly and reflects the community it is rendering. The factors which are considered when choosing a Lay Magistrates are; gender, political affiliation, geographical location, ethnic minorities and occupation

Achieving a balance is, however, a secondary consideration to the essential and pre-eminent requirement that a candidate must be personally suitable for appointment, possessing the qualities required in a magistrate.

The training of a magistrate is quite easy, as you do not have to be legally qualified. The Judicial Studies Board supervises the training of magistrates. The Judicial Studies Board sets out a

syllabus of training topics but because of the huge number of magistrates involved the training has to be carried out locally. Some senior magistrates will act as mentors and train up newly appointed magistrates. When a magistrate has been appointed there is an induction programme of 16 hours where the magistrates will observe cases in courts and attend workshops on court procedure. During the magistrate's first year there is continued basic training, observing cases, visiting prisons, Young Offenders' Institute and a 12-hour course on sentencing and bail and legal aid. On the second and third year the Lay Magistrates will do an 8-hour continued training course. From then on there will be a refresher course every 3 years for 12 hours on weekends. Lay Magistrates are also appraised a lot. Criticisms of the training process is that since the training will vary from one region to another the training will not be the same. This means that there will be no national training programme. But in the future reforms will be made and the training process of Lay Magistrates will be more effective and relevant. Lay Magistrates can only be dismissed by the Lord Chancellor, currently Lord Irvine. For example in the case of Kathleen Cripps who was dismissed by the Lord Chancellor following her taking part in a CND demonstration outside the court where she normally sat because of a case being heard there. She appealed to the Court of Appeal and lost. Other reasons for dismissal could be criminal offences, transvestite behaviour. Approximately 10 Lay Magistrates are removed/dismissed each year.

The role of the magistrate is to sit in court and hear cases. They have a maximum sentencing power of 6 months imprisonment and/or £5000. Magistrates mainly deal with summary offences in the criminal side of things. The types of criminal cases which the magistrates can deal with are summary crimes and triable either way crimes.

Summary offences are minor offences or minor criminal damage. They are only tried by magistrates. If the sentencing power they have is not enough for the actions done then the case is pushed up to the Crown court because they have more sentencing power.

Triable either way cases are cases that can be tried in either the Crown or Magistrate's court. These types of crimes include actual bodily harm (ABH), burglary, theft or property by deception. The first stage of the process is for the defendant to come before the magistrates and choose whether he/she wants

the trial to be heard in the Crown Court or the Magistrate's court. Most people plead not guilty and chose to go to the crown court because even though the sentencing power is greater, the trial will be heard before a jury which means the defendant thinks they have a better chance of being cleared. But once they get to the Crown court they change their plea from not guilty to guilty and have their trial heard in the Magistrate's Court. This is because having the case at the Crown court costs a lot of money which most people do not have that sort of money so they just stall for time. Also the people working on the cases put in time and effort to prepare the cases for the Crown Court and when the defendant pleads guilty all the work is for nothing. The government has tried to change this by proposing a bill call the Criminal Justice Mode of Trial but it has been rejected twice.

Magistrate's Court are not allowed to hear a trial for indictable offences such as murder, rape, etc. these trials are heard in the Crown Court but the first stage of the procedure is heard in the Magistrate's. This is called the administrative hearing and is whether legal aid, bail or to order any reports such as medical or psychological. They then go through the committal procedure in the Magistrate's and then sent to the Crown Court for the trial. The reason why the Magistrates Court cannot be heard in there is because they is not jury and for a major crime there needs to be a jury there. Also the Magistrate's do not have the authority or the power to give the sentences.

The Magistrate's Court deals with 97% of all the criminal crimes in England and Wales. The magistrate's court is involved in the remaining 3%. These are cases with remand hearings such as bail applications, arrest warrants, legal aid and committal proceedings.

Magistrates also deal with civil matters as well as criminal matters. The Magistrate's court is where the deal with enforcing debts such as utility debts such as electricity, gas and water. They also grant or refuse licences to sell alcohol and betting. Magistrates that work in the youth court have to be specially trained because of the type of court it is and it is a delicate issue. In these courts youths aged 10-17 are tried with criminal offences. In the family court there are special magistrates. In this court they deal with things like protection orders, affiliation cases, adoption orders and proceeding under the Children Act 1989.

